

SETTLEMENT AGREEMENT & MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made by and between the City of San Jose (the "City"), and Housing and Development Software, Inc. ("HDS"), collectively referred to as the "Parties."

WHEREAS, disputes have arisen between the Parties concerning their respective rights and obligations under the software license, maintenance agreement and installation agreement entered into by the Parties on or about September 27, 2001 and modified on or about February 21, 2003 and again on or about May 15, 2003 ("Subject Agreements") and as more fully set forth in the Litigation ("Underlying Disputes"); and

WHEREAS, the City filed an action against HDS regarding the Underlying Disputes on October 8, 2004 in the Santa Clara County Superior Court, case number 104CV028456, entitled *City of San Jose v. Housing and Development Software, Inc.*, which case was removed to the United State District Court for the Northern District of California, case number C04-05140 JF ("Action");

WHEREAS, HDS filed a cross-complaint against the City in the Action regarding the Underlying Disputes;

WHEREAS, the Parties desire to settle the Action, including the Underlying Disputes;

THEREFORE, the Parties agree as follows:

1. **Payment:** The City agrees to accept and HDS agrees to pay to the City the sum of Eighty Thousand Dollars (\$80,000.00) ("Principle"), in installments as follows:

a. **First Payment:** HDS shall pay the first \$5,000 to the City no later than five days after approval of this Settlement Agreement by the City Council of the City of San Jose in open session, which approval shall be attached hereto as Exhibit A.

b. **Periodic Installment Payments:** HDS shall pay the next \$30,000 to The City in 60 monthly installments of \$500 each beginning on the later of August 1, 2009 or the first day of the first month after ratification of this Settlement Agreement by the City Council of the City of San Jose.

c. **Balance:** HDS shall pay the remaining \$45,000 to The City on the first day of the 61st month following the first payment under paragraph 1.b.

d. **Instructions for Payment:** All payments shall be made by draft or check payable to the "City of San Jose," and shall be delivered by U.S. Mail to the Office of the City Attorney at the address specified in paragraph 4 below.

e. **No Interest:** Except as provided in subparagraph f.iii. below, no interest shall accrue on the Principle and all of HDS's payments shall serve to reduce the amount of the Principle owed by HDS.

f. **Acceleration and Judgment:** Failure by HDS to make any payment within 5 days of its due date shall constitute a default by HDS. In the event of default by HDS:

- i) the City shall give HDS written notice of the default;
- ii) HDS shall have 30 days from receipt of such notice to cure the default and continue with the payments as set forth above;
- iii) If HDS fails to cure its default, the total remaining unpaid balance of the Principle shall become immediately due and payable, and the City shall

have the right to request entry of judgment in the United States District Court, Northern District of California against HDS only in the form set forth on Exhibit B without further notice to HDS. When entered, the judgment shall bear interest at the legal rate.

2. **Releases:** The Parties, on behalf of themselves, their past and present employees, partners, agents, predecessors, successors, assigns, heirs, executors, administrators, officers, attorneys, shareholders and directors, hereby release and forever discharge each other, their past and present employees, partners, agents, predecessors, successors, assigns, heirs, executors, administrators, officers, attorneys, shareholders and directors, from any and all claims, demands, damages, actions, or suits, known and unknown, arising from or in anyway related to the Action, the Subject Agreements, or the Underlying Disputes.

3. **Dismissals of The Action:** In exchange for the promise to pay and accept the Principle, both the City and HDS agree to dismiss, with prejudice, their respective complaint and cross-complaint in the Action, each side to bear their own attorneys' fees and costs.

4. **Notices:** All communications between the Parties, including HDS's payments, concerning this Settlement Agreement shall be made by U.S. Mail or overnight delivery to the following addresses:

The City:

Office of the City Attorney
Attn: Robert Fabela
200 East Santa Clara Street
San Jose, California 95113

HDS:

Cristina Gilson
Housing Development Software

2685 Executive Park Dr., Suites 7 & 8
Weston, FL 33331-3624

Each party shall notify the other in writing of any changes to these addresses during the duration of this Settlement Agreement.

5. **Waiver of Civil Code Section 1542:** Section 1542 of the Civil Code of the State of California provides as follows:

“A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him must have materially affected his or her settlement with the debtor.”

The Parties hereby represent that Civil Code Section 1542 has been read and reviewed with their counsel and understood, and that the Parties hereby waive all present and future rights and benefits under Section 1542 to the extent it would permit claims arising from the Action, the Subject Agreements, or the Underlying Disputes based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

6. The Parties hereby declare that the terms of this Settlement Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise and settlement of the Action and the Underlying Disputes., and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid Action.

7. This Settlement Agreement represents the entire agreement and understanding between the parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only

by a written instrument signed by all parties hereto. All Parties will cooperate in executing all documents necessary to effectuate this Agreement.

8. The Parties acknowledge and agree that this Settlement Agreement and the consideration or Principle paid pursuant to this Settlement Agreement should not and shall not be construed as an admission or concession of any liability, expressed or implied, or that any of the Parties have violated any law or otherwise acted wrongfully in any manner or fashion. All Parties hereto specifically deny that they have violated any law or otherwise acted wrongfully or unlawfully in any manner. The Parties have entered into this Settlement Agreement in order to purchase peace and to resolve and settle all disputes and potential disputes between them.

9. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that he or she has full authority to do so.

10. HDS agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision.

11. If any part of this Settlement Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

12. The parties agree that the law governing this Settlement Agreement shall be that of the State of California. In the event that suit shall be brought by either party to this Settlement Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

13. This Settlement Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date first set forth below.

Date: June __, 2009

CITY OF SAN JOSE

By: _____
RICHARD DOYLE
City Attorney

Date: June __, 2009

HOUSING AND DEVELOPMENT
SOFTWARE, INC.

By: _____
CRISTINA M. GILSON
Chief Executive Officer

APPROVED AS TO FORM

Date: June __, 2009

CANON YOUNG

Attorney for HOUSING AND
DEVELOPMENT SOFTWARE, INC.

Date: June __, 2009

RICHARD DOYLE, City Attorney

By: _____
ROBERT FABELA
Senior Deputy City Attorney